Before the

Federal Communications Commission

Washington, D.C.

In the Matter of	
Schools and Libraries Universal Service CC Docket No. 02-6 Support Mechanism	CC Docket No. 02-6
Comment on Petition for Clarification Regarding the Definition of "Consultant" and Confidentiality of Consultant Information Required by New FCC E-Rate Forms 470 And 471	DA 10-2234

COMMENTS OF ON-TECH CONSULTING, INC.

ON PETITION FOR CLARIFICATION REGARDING THE DEFINITION OF "CONSULTANT" AND CONFIDENTIALITY OF CONSULTANT INFORMATION REQUIRED BY NEW FCC E-RATE FORMS 470 AND 471

Part 1: The Confidentiality Issue

For On-Tech, the public availability of consultant information is not an issue. Our contact information is already publicly available on our clients' forms. However, I agree with many of FFL's arguments that publishing consultant information will harm the program.

I. A Public Database Would Be Free Advertising for Consultants

I agree with the concern that individuals will obtain a Consultant Registration Number, and immediately begin marketing themselves as "FCC approved." I often see similar behavior among service providers who have just received a Service Provider Identification Number and then refer to themselves as "E-Rate approved" in marketing literature.

II. A Public Database Would Create Unexpected Procurement Process Problems

FFL is correct that if service providers can learn the identity of a consultant that worked on an application, they will market to that consultant. Because On-Tech's contact information is attached to our clients' applications, we are contacted at all times of the year by service providers

who find our information on old 470s, and want to meet with us in order to market their products to school districts.

III. A Public Database Would Reveal Highly Confidential Business Information

I do not find this argument compelling. Since most applicants are public schools and libraries, the identity of their E-Rate consultant is already public information. Publishing the consultant information would not reveal highly confidential information, but only provide very convenient access to information that is already public, but is not easily available. Easy access to consultant information could facilitate competition in the E-Rate consultant marketplace, but it could also facilitate collusion, as consultants became better aware of each other's "turf."

IV. A Public Database Would Make It More Difficult for Certain Applicants to Receive E-rate Assistance

It is certainly true that I would be reluctant to attach On-Tech's good name to a troubled application. This concern is easily alleviated if the "consultant" field on the form is not updatable. The consultant should not be changed in any case; the important information for USAC is the identity of the consultant(s) who assisted with the application before it was filed, not any consultants who become involved with the application at some later date.

V. USAC Collects the Same Consulting Information Now on Letters of Agency

I am concerned that FFL's suggestion to use Letters of Agency seems to assume that USAC will collect these letters in all cases. On-Tech prefers the current system, where such letters are provided in cases of special reviews, but are not routinely collected.

VI. A Drop-Down List of FCC-Registered Consultants Could Create the Misleading Impression that the Commission Has Endorsed Those Consultants

I agree with FFL's concerns about a drop-down list, and have four further concerns.

First, that drop-down list will become a very valuable marketing tool for consultants. In fact, it is easy to see how that drop-down list could become the most common way for applicants to find a consulting firm. If I were looking to rapidly expand my client base, I would create a new firm called "AAA E-Rate Consultants" and register my new firm with USAC. Applicants who clicked on the list of consultants would see my company first. And to further increase my visibility, I would create several more consulting firms, so that my firms appeared in several places on the list. There would be a swell of "new" consulting firms, many with names designed to appear at the top of the drop-down.

Second, a drop-down list would cause confusion. Since the names of unincorporated companies are generally controlled at the county level, and corporate names at the state level, there will be cases where two companies with the same name appear on the drop-down. There are, for example, unrelated companies named "E-Rate Consulting" in both NJ and GA, and perhaps in other states. Beyond innocent coincidence, the drop-down would encourage unscrupulous actors to create consulting companies with names similar (or identical) to existing consulting firms.

Third, I believe the purpose of requiring applicants to identify consultants is to reduce fraud. One of the ways that fraud will be found is when applicants put a service provider's SPIN in the

consultant field. A drop-down list would make it impossible for an applicant to correctly identify an improper consultant, thus limiting the usefulness of the information collected.

Fourth, some firms operate not under their corporate name, but under a "dba." The listing of those firms in a drop-down would create confusion.

Part 2: Definition of "Consultant" and Other Unanswered Questions

I share FFL's desire to see much more clarity in the definition of a consultant. Because On-Tech is a "full-service" consulting firm, the exact definition will not affect us directly; no matter how "consultant" is defined, On-Tech will meet the definition. I am concerned about how the definition of "consultant" will affect the program, not my firm.

1. What is the definition of the term "consultant"?

If the Commission uses a broad definition of the term "consultant," it will cause several problems. In order to explore those problems, I would first like to look at the sort of broad definition that most people think of as an "E-Rate consultant."

"Consultant" could be broadly defined as:
An individual or organization which provides substantial assistance to the applicant in any part of the E-Rate application process.

"Substantial assistance" could be defined as:
At least 30 minutes of time spent on tasks related to the E-Rate application process at the request of the applicant.

"The E-Rate application process" could include:
Technology planning
Procurement: needs analysis, preparation of RFP, review of bid documents, analysis of bids
Form completion, submission

This definition creates two serious difficulties for USAC. First, it will require space on the forms for several consultants. Second, it will create the appearance of a conflict of interest where none exists, causing USAC to conduct unnecessary investigations.

I have seen funding requests where the state Department of Education assisted in preparing the technology plan, an engineering firm wrote specifications, the applicant's E-Rate consultant completed the forms and compiled the bids, the service provider's E-Rate consultant provided assistance in determining eligibility of items in the contract, and the service provider supplied the Item 21 Attachment.

Under the broad definition above, all five of those organizations provided substantial assistance in the E-Rate application process, so the applicant would need to list five consultants. The inclusion of the service provider and the service provider's consultant would prompt USAC to conduct an investigation, when in fact their assistance after procurement is completed is completely proper.

In order to avoid these problems, the Commission should limit the definition of a consultant. The Commission should focus on what FFL referred to as "procurement consultants." The

reason for requiring applicants to name consultants is to limit abuse by consultants. That abuse does not occur during the technology planning phase, nor in completing the Form 471. The abuse takes place during procurement.

By narrowing the requirement to include only consultants involved in procurement, the need to list multiple consultants would be substantially reduced. In the example above, five consultants were involved in the application process, but only one was involved in the procurement process. With the narrower definition, the applicant would not have to list the service provider as a consultant, which will save an unnecessary investigation by USAC into the role of the service provider.

In order to create a better definition of consultant, the Commission should narrow the "E-Rate application process" by clarifying that applicants need to identify only consultants involved in: specifying services, creating the Form 470, receiving bids, evaluating bids or selecting service providers. Consultants who assisted only in technology planning need not be identified. Consultants who assisted in the E-Rate process only after a service provider is selected need not be identified.

2. Is a state E-rate Coordinator a "consultant"? A regional service agency employee? Someone who works for a non-profit organization? A local volunteer?

Any of the above can server as consultants. A person's employer should not exclude them from being considered a consultant. Nor should payment be a requirement to be considered a consultant. USAC should know when a regional service agency is serving as both consultant and service provider, or when the employee of a service provider who is a local volunteer provides assistance.

3. To be a "consultant," must the company or individual receive a fee for "assisting" with the application process or the application or is the receipt of payment for this kind of "assistance" irrelevant?

Whether a person is considered a consultant should be based on the work they perform for an applicant, not whether they receive payment. FFL is correct that in many cases of abuse by consultants, the consultants were not paid by the district.

4. To constitute "assistance" must the assistance be part of a dedicated, ongoing effort to "assist"? What if, for example, the "assistance" consists only of answering an applicant's questions by email or phone on an irregular, ad hoc basis?

See the response to #5 below.

5. Is there an amount of "assistance" that the Commission will consider *de minimis* and thus unnecessary to report?

It is reasonable to set a *de minimis* limit of 30 minutes on assistance. I often answer questions for applicants without taking any payment, and I don't believe that such assistance should make me a consultant for that applicant. Usually, I will answer a few questions in a single call, but there have been times when I have taken several short calls from an applicant during the application process. Even though I repeatedly assisted those applicants, I don't believe I should be considered a consultant just because the assistance was spread out over several months. The total amount of time spent assisting

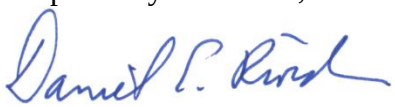
6. What recourse will a company or an individual have if an applicant lists that company or individual incorrectly or by mistake on its form as a "consultant," or if the so-called "consultant" disputes that it actually is a "consultant" and/or that it assisted with the application process or application?

If the identity of consultants is not made public, as I believe it should not be, a consultant will have no way of knowing if he or she has been identified on a form. A mechanism should be put in place to notify firms when they are identified on a form.

7. What if an applicant receives consulting assistance from multiple sources simultaneously and in relatively equal amounts – e.g., from a company that advertises itself as an E-rate consulting company and a representative from the state library system? Must the applicant list every "consultant" who helps? If not why not? If so, how will applicants report multiple consultants on their forms?

See my response to #1 above.

Respectfully submitted,



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